

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #11	CCRB Case #: 201808421	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 10/01/2018 3:43 PM	Location of Incident: Beach 111th Street and Rockaway Beach Boulevard; 100th Precinct stationhouse	Precinct: 100	18 Mo. SOL 4/1/2020	EO SOL 11/16/2020	
Date/Time CV Reported Mon, 10/01/2018 10:48 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/11/2018 11:14 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Federico	08760	961755	100 PCT
2. POM Jonathan Costanzo	16028	955843	100 PCT
3. POF Cherish Robinson	04074	964731	100 PCT
4. POM Michael Mellone	08907	960931	100 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jonathan Ringel	4515	939308	100 PCT
2. POM Michael Peck	27513	953224	100 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nicholas Federico	Abuse: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Nicholas Federico threatened § 87(2)(b) with the use of force.	
B.POM Nicholas Federico	Force: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Nicholas Federico used physical force against § 87(2)(b)	
C.POM Jonathan Costanzo	Force: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Jonathan Costanzo used physical force against § 87(2)(b)	
D.POF Cherish Robinson	Force: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Cherish Robinson used physical force against § 87(2)(b)	
E.POM Michael Mellone	Force: At the 100th Precinct stationhouse, Police Officer Michael Mellone used physical force against § 87(2)(b)	
F.POM Nicholas Federico	Force: At the 100th Precinct stationhouse, Police Officer Nicholas Federico used physical force against § 87(2)(b)	

Case Summary

On October 1, 2018, Sergeant Charles Grimm of the 100th Precinct contacted IAB via telephone and filed this complaint on behalf of § 87(2)(b). The complaint was received at the CCRB on October 11, 2018.

On October 1, 2018, at approximately 3:43 p.m., at Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Nicholas Federico of the 100th Precinct threatened § 87(2)(b) with the use of force (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Federico, Police Officer Jonathan Costanzo, and Police Officer Cherish Robinson, all of the 100th Precinct, used physical force against § 87(2)(b) (**Allegations B, C, and D: Force**, § 87(2)(g)).

At the 100th Precinct stationhouse, Police Officer Michael Mellone of the 100th Precinct and PO Federico used physical force against § 87(2)(b) (**Allegations E and F: Force**, § 87(2)(g)).

§ 87(2)(b) was arrested and charged with § 87(2)(b).

There is no known video footage of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Nicholas Federico threatened § 87(2)(b) with the use of force.

The following facts are undisputed:

On October 1, 2018, at approximately 2:46 p.m., § 87(2)(b) a § 87(2)(b)-old male, punched an unknown individual in the face several times on the boardwalk near Beach 111th Street in Queens. The individual was bleeding heavily from his face as a result of the assault. § 87(2)(b) then fled the scene. A description of § 87(2)(b) a black male, approximately 6' tall, 150 pounds, wearing an orange and black shirt and black pants, was put over the radio by the 911 dispatcher.

PO Federico, PO Costanzo, PO Robinson, and Sergeant Jonathan Ringel of the 100th Precinct, canvassed the area for an individual that matched the description provided. Sgt. Ringel and PO Robinson saw § 87(2)(b) who matched the description, and stopped him at Beach 111th Street and Rockaway Beach Boulevard. The unidentified victim arrived at the location in an ambulance and told Sgt. Ringel that § 87(2)(b) was the individual that assaulted him.

When PO Federico and PO Costanzo attempted to arrest § 87(2)(b) resisted the officers by pushing away their arms. PO Federico, PO Costanzo, and PO Robinson took § 87(2)(b) to the ground and handcuffed him. § 87(2)(b) was arrested for assault in the second degree and resisting arrest.

The rest of the details of this incident are in dispute.

§ 87(2)(b) provided a statement at Crossroads Juvenile Detention Center. As § 87(2)(b) is a minor, the investigation attempted to reach his mother, § 87(2)(b) to sign the verification form, unsealing orders, and HIPAA forms, but was unsuccessful in reaching § 87(2)(b) throughout the course of the investigation.

In his unverified statement, § 87(2)(b) (BR 04) said that he was riding his bike with three of his friends on Beach 110th Street. A tall, white male with heavyset build, approximately in his 40s, who was also riding a bike, hit into § 87(2)(b)'s bike. § 87(2)(b) told the male, "If you hit my bike again, I'm going to have to lay my hands on you." The man hit into § 87(2)(b)'s bike a second time and § 87(2)(b) punched the man in the face several times. § 87(2)(b) heard the man call 911 to report that "two teens jumped [him]," but § 87(2)(b)'s friends were not involved in the

altercation. § 87(2)(b) then left the location and went back to § 87(2)(b) where he resided at the time, located at § 87(2)(b) § 87(2)(b).

Approximately five minutes later, § 87(2)(b) exited § 87(2)(b) § 87(2)(b) and walked toward Beach 116th Street to take the subway to visit his mother. At Beach 111th Street, a marked police vehicle stopped in front of § 87(2)(b) and four male uniformed officers, one of which was PO Federico, approached § 87(2)(b). One of the officers, whom § 87(2)(b) could not describe, told him he was “under investigation for assault” and could not move. § 87(2)(b) told the officers to “hurry up” and told them he was leaving. Another officer, whom § 87(2)(b) also could not describe told him, “If you move you’re gonna get tased.” § 87(2)(b) did not allege that an officer pointed a taser at him. § 87(2)(b) remained at the location and was not doing anything with his body as the officer was speaking with him. When the officers tried to arrest § 87(2)(b) § 87(2)(b) pushed all of the officers’ arms because he did not want to be wrongfully arrested.

According to PO Federico (BR 14), once PO Costanzo told him the victim positively identified § 87(2)(b) as the person who assaulted him, PO Federico told § 87(2)(b) he was under arrest and asked § 87(2)(b) to place his hands behind his back. PO Costanzo was still in the ambulance at this time, and Sgt. Ringel and PO Robinson were standing behind PO Federico out of view. § 87(2)(b) said, “You’re not arresting me,” and moved three to five feet backward with his hands at shoulder height. PO Federico did not remember if § 87(2)(b)’s hands were open or closed. PO Federico walked toward § 87(2)(b) and again asked him to place his hands behind his back. § 87(2)(b) again said, “You’re not arresting me.” PO Federico then grabbed § 87(2)(b)’s left wrist with his left hand to place him in handcuffs. § 87(2)(b) immediately slapped PO Federico’s hand down, causing him to break free of PO Federico’s grip, and pushed PO Federico with open palms on PO Federico’s chest, causing him to stumble back. PO Federico removed his taser, pointed it at § 87(2)(b)’s center mass and said, “If you don’t stop resisting, you’re going to be tased.” After pointing the taser at § 87(2)(b) for approximately five to seven seconds, PO Federico holstered his taser because he did not know if Sgt. Ringel and PO Robinson were planning to charge at § 87(2)(b) because § 87(2)(b) had just pushed him, and he did not want to tase another officer.

PO Costanzo (BR 05) said when he and PO Federico arrived to Beach 111th Street and Rockaway Beach Boulevard, where Sgt. Ringel and PO Robinson had stopped § 87(2)(b) § 87(2)(b) was yelling and cursing at the officers, but did not recall specific statements. PO Costanzo did not say, “If you move, you’re gonna get tased,” or hear any other officer do so.

Sgt. Ringel (BR 06) said that as he was waiting with the victim for an ambulance to arrive, an unidentified employee of § 87(2)(b) § 87(2)(b) approached Sgt. Ringel and asked Sgt. Ringel what was going on. Sgt. Ringel did not know how the employee was alerted to the situation. Sgt. Ringel discussed the incident with the employee and provided the description of the suspect. The employee told Sgt. Ringel he believed the suspect was § 87(2)(b) § 87(2)(b). Sgt. Ringel requested a “face sheet” with photographs of § 87(2)(b) § 87(2)(b) which the employee was able to obtain. Sgt. Ringel then showed the photographs to the victim, who said that § 87(2)(b) § 87(2)(b) was in fact the person that assaulted him.

The employee then informed Sgt. Ringel that § 87(2)(b) § 87(2)(b) was walking toward Beach 111th Street with another male. Sgt. Ringel saw § 87(2)(b) § 87(2)(b) and both he and PO Robinson approached him. Sgt. Ringel asked the male to step aside and the male complied. Sgt. Ringel told § 87(2)(b) § 87(2)(b) that he was stopped because Sgt. Ringel was conducting a “mini investigation” and needed to “verify a few things.” § 87(2)(b) § 87(2)(b) was agitated and told Sgt. Ringel, “You have two minutes.” Sgt. Ringel informed § 87(2)(b) § 87(2)(b) he could take all the time he needed to conduct the investigation.

Sgt. Ringel did not say, “If you move, you’re gonna get tased,” or hear any other officer do so. Both Sgt. Ringel and PO Robinson were equipped with tasers.

PO Robinson (BR 15) did not have an independent recollection of an officer telling § 87(2)(b) “If you move, you’re gonna get tased,” or seeing an officer point a taser at § 87(2)(b).

PO Federico, PO Costanzo, and PO Robinson’s TRI consistently noted that § 87(2)(b) used a hand strike and pushing against an officer (BR 10-12).

A Conducted Electrical Weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. NYPD Patrol Guide Procedure 221-08 (BR 17).

Active resisting includes physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, and pushing to avoid or prevent being taken into or retained in custody. Active aggression is a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. NYPD Patrol Guide Procedure 221-02 (BR 07).

§ 87(2)(g)

Allegation (B) Force: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Nicholas Federico used physical force against § 87(2)(b)

Allegation (C) Force: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Jonathan Costanzo used physical force against § 87(2)(b)

Allegation (D) Force: At Beach 111th Street and Rockaway Beach Boulevard in Queens, Police Officer Cherish Robinson used physical force against § 87(2)(b)

According to § 87(2)(b) (BR 04), after he pushed the officers’ arms because he did not want to be wrongfully arrested, all of the officers grabbed § 87(2)(b)’s legs and took him to the ground, causing § 87(2)(b) to land face-first and sustain a small scratch on his right cheek. § 87(2)(b) felt an officer, whom he could not see, place his foot on § 87(2)(b)’s neck and on back. § 87(2)(b) could no longer resist the arrest. After approximately six minutes, the officers placed § 87(2)(b) into handcuffs.

PO Federico (BR 14) said that after holstering his taser, he approached § 87(2)(b) and grabbed § 87(2)(b)’s sweatshirt with both of his hands. PO Federico pulled § 87(2)(b) to the ground by his sweatshirt to prevent § 87(2)(b) from fleeing and to effect the arrest. PO Federico believed § 87(2)(b) landed on his back, but he was not certain. § 87(2)(b) continued to resist by pushing PO Federico’s hands away while PO Federico was trying to grab § 87(2)(b)’s wrists. After approximately one minute, PO Federico handcuffed § 87(2)(b). PO Federico did not have any injuries as a result of being taken to the ground, as the scratch on § 87(2)(b)’s face was sustained prior to police interaction and due to the assault. PO Federico had no knowledge of PO Costanzo, PO Robinson, or Sgt. Ringel assisting him in arresting § 87(2)(b).

PO Costanzo (BR 05) said that after the victim positively identified § 87(2)(b) to both himself and Sgt. Ringel, Sgt. Ringel instructed PO Costanzo and the other officers to arrest § 87(2)(b). PO Costanzo grabbed § 87(2)(b)’s left arm and PO Federico grabbed § 87(2)(b)’s right

arm. § 87(2)(b) moved his arms back and forth and broke free from the officers' grip. § 87(2)(b) attempted to punch PO Federico once or twice, but was unsuccessful in doing so. PO Federico then took § 87(2)(b) to the ground while PO Costanzo held § 87(2)(b)'s left arm. PO Costanzo did not see PO Federico grab § 87(2)(b)'s legs and could not see how exactly PO Federico took § 87(2)(b) to the ground. Once on the ground, after approximately 15 to 20 seconds, PO Costanzo and PO Federico both took one arm and handcuffed § 87(2)(b). PO Costanzo did not put his foot on § 87(2)(b)'s neck and back and did not see any other officer do so.

PO Robinson (BR 15) did not recall how exactly PO Federico took § 87(2)(b) to the ground and she denied assisting PO Federico in doing so.

According to Sgt. Ringel (BR 06), when PO Federico told § 87(2)(b) he was under arrest and removed his handcuffs, § 87(2)(b) moved his arms and swung at PO Federico with a closed fist, but did not make contact with PO Federico. PO Federico, PO Costanzo, and PO Robinson grabbed § 87(2)(b)'s arms and gave him verbal commands such as, "Don't resist." § 87(2)(b) said, "I'm not going," and pushed the officers. PO Federico, PO Costanzo, and PO Robinson took § 87(2)(b) to the ground. Sgt. Ringel did not see how § 87(2)(b) landed and did not see any officer put his or her foot on § 87(2)(b)'s neck or back. Less than two and a half minutes later, the officers handcuffed § 87(2)(b). Sgt. Ringel did not see a small laceration on § 87(2)(b)'s cheek or any other injuries on him. PO Robinson said Sgt. Ringel instructed her to prepare a TRI, even though she did not have contact with § 87(2)(b).

§ 87(2)(b)'s Prisoner Movement Slip includes a black and white photograph of § 87(2)(b). There appears to be some discoloration on § 87(2)(b)'s right cheek, though the photograph does not definitely show whether the discoloration is due to a laceration or another form of injury (BR 16).

PO Federico and PO Costanzo's TRIs are consistent with their statements (BR 10-11). PO Robinson's TRI is consistent with the TRIs prepared by PO Federico and PO Costanzo (BR 16).

The ISAR prepared by Captain John T. Ganley notes that PO Federico, PO Costanzo, and PO Robinson were all involved in performing a takedown to place § 87(2)(b) into custody (BR 18).

Although PO Robinson denied participating in the takedown and using force against § 87(2)(b) because she prepared a TRI and is listed in the ISAR as participating in the takedown, the investigation pled a force allegation against her.

Active resisting includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, and pushing to avoid or prevent being taken into or retained in custody. NYPD Patrol Guide Procedure 221-02 (BR 07).

Force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide Procedure 221-01 (BR 08).

A police officer, in the course of effecting or attempting to effect an arrest, of a person whom he reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent escape from custody. N.Y. Penal Law § 35.30 (BR 09).

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Force: At the 100th Precinct stationhouse, Police Officer Michael Mellone used physical force against § 87(2)(b)

Allegation (F) Force: At the 100th Precinct stationhouse, Police Officer Nicholas Federico used physical force against § 87(2)(b)

§ 87(2)(b) (BR 04) said that in the cell area of the stationhouse, male officers in uniform, whom he could not further describe, told him to take his sneakers off. § 87(2)(b) refused to do so because he did not think he should have been arrested. Additional male officers, who § 87(2)(b) could also not describe, pushed § 87(2)(b) against the cells and immediately took him to the ground. § 87(2)(b) did not sustain any injuries. § 87(2)(b) denied raising his hand to punch an officer and said it would have been impossible for him to do so because he was handcuffed.

The officers then told § 87(2)(b) he had to go to the hospital because he was “fifteen.” § 87(2)(b) was transported to § 87(2)(b), where he stayed for two to five hours. Medical personnel performed a CAT Scan which returned negative results.

According to PO Mellone (BR 12), he and his partner, PO Peck, arrived at Beach 111th Street and Rockaway Beach Boulevard to transport § 87(2)(b) to the 100th Precinct stationhouse. Upon arriving at the stationhouse, PO Mellone searched § 87(2)(b) in front of the desk without incident, and then walked him into the cell area. PO Federico was also in the cell area at this time.

PO Mellone told § 87(2)(b) he could sit down in a chair outside the cells to take off his shoelaces, as he could not have them in the cells. § 87(2)(b) refused to sit down and take off his shoelaces, and told PO Mellone, “Go fuck yourself.” PO Mellone again told § 87(2)(b) that his shoelaces had to come off and took off one of § 87(2)(b)'s handcuffs so that § 87(2)(b) could remove his shoelaces. § 87(2)(b) immediately tried to punch PO Mellone with a closed fist in the face, but was unsuccessful. PO Mellone grabbed § 87(2)(b) and fell on him, causing § 87(2)(b) to land on the back on the floor. PO Federico also assisted PO Mellone in taking § 87(2)(b) to the ground, but PO Mellone did not remember exactly how PO Federico assisted him. PO Mellone and PO Federico landed on their sides. § 87(2)(b) continued to move his arms and kick his legs once on the ground, and told the officers, “I’m going to fucking kill you.” PO Mellone told § 87(2)(b) multiple times to give him his hands, but § 87(2)(b) would not comply. After approximately ten seconds, PO Mellone and PO Federico handcuffed § 87(2)(b). PO Mellone denied pushing § 87(2)(b) against the cells before taking him to the ground.

PO Federico (BR 14) was generally consistent with PO Mellone, though PO Federico did not specify that § 87(2)(b) used profanity and said that § 87(2)(b) only said, “You’re not taking my shoes” in the cell area.

Neither PO Costanzo (BR 05), PO Robinson (BR 15), nor Sgt. Ringel (BR 06) saw what occurred in the cell area.

PO Mellone’s TRI was consistent with his statement (BR 13).

Active resisting includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, and pushing to avoid or prevent being taken into or retained in custody. NYPD Patrol Guide Procedure 221-02 (BR 07).

Force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide Procedure 221-01 (BR 08).

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 03).
- PO Federico has been a member of service for two years and this is the first CCRB complaint to which he has been a party.
- PO Costanzo has been a member of service for five years and this is the first CCRB complaint to which he has been a party.
- PO Robinson has been a member of service for one year and this is the first CCRB complaint to which she has been a party.
- PO Mellone has been a member of service for three years and this is the first CCRB complaint to which he has been a party.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) [REDACTED]
- As of December 20, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 02).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date